IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1563 OF 2005
IN
SUIT NO.2567 OF 1996

Mrs.S.Umavati Shetty and others Plaintiffs

versus

Salauddin Mohamed Sami Defendant

Ms.Purnima G. Bhatia for plaintiff.

Mr.Santosh Shetty i/by M.P.Vashi for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th July 2005

PC :

1. The plaintiff has moved this Notice of Motion because the suit has been dismissed for want of prosecution on 16th April 2004.

2. Advocate appearing for the plaintiff, who is 73 years of age, has filed his personal affidavit pointing out that on account of his failing health, he has been not appearing regularly in this Court. The briefs have been assigned by him to the junior advocates and insofar as this matter is concerned, inadvertently the brief

could not be assigned and he also could not remain present when the matter was called out on 16th April 2004. Although, this fact is denied by the defendants, in my view, in the light of the affidavit filed by the advocate pointing out his mistake, the plaintiffs should not suffer and they deserve a chance for the suit being heard on merits. Accordingly, Notice of Motion is made absolute in terms of prayer clause (a). Suit restored on file. To be heard on merits and in accordance with law. All interim orders passed in the suit are also restored. Plaintiff to pay costs quantified at Rs.1,500/-. Notice of Motion disposed off.

(S.C.DHARMADHIKARI, J.)